Filed 6/22/09 In re G.T. CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re G.T., a Person Coming Under the Juvenile Court Law.	B208757 (Los Angeles County Super. Ct. No. CK67571)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. F.C., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, Marguerite D. Downing, Judge. Affirmed.

Kate M. Chandler, under appointment by the Court of Appeal, for Defendant and Appellant.

Raymond G. Fortner, Jr., County Counsel, James M. Owens, Assistant County Counsel and Melinda White-Svec, Deputy County Counsel for Plaintiff and Respondent.

F.C., the presumed father of G.T. (Father),[1] appeals from the order made at the May 13, 2008 disposition hearing (Welf & Inst. Code, § 361)[2] declaring G.T. a dependent child of the juvenile court and removing her from his custody. Father contends there is no substantial evidence to support the court's jurisdiction findings as they relate to him or the disposition order. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. *Dependency Proceedings Involving G.T.'s Older Siblings*

Father and Z.T. (Mother) are the parents of five children, one son, L.T. (born in February 2001), and four daughters, including G.T., who is the youngest of the five children. (G.T. was born in November 2007; her older sisters were born in May 2002, October 2004 and June 2006.) In March 2007, before G.T. was born, the Los Angeles County Department of Children and Family Services (Department) filed a section 300 petition, alleging, among other things, Father and Mother had put their four children at substantial risk of harm. The petition alleged Father and Mother abused marijuana; Mother's use of marijuana for medical purposes in a manner not prescribed placed the children at a risk of harm; Father and Mother used inappropriate physical discipline with the children and had engaged in verbal and physical altercations in the presence of their children putting them at substantial risk of harm. The juvenile court detained the children, removing them from their parents' custody pending a jurisdiction hearing.

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1 In an effort to maintain the privacy of children involved in juvenile cases in the face of the ever-increasing ability of modern technology to breach the confidentiality of juvenile court records, the court now uses a protective nondisclosure policy known as "double suppression." Initials are substituted for both the first and last names of each child who is a party to the action, replacing our traditional practice of using the child's first name and last initial. The double suppression policy also applies to other family members who are not parties when nondisclosure is necessary to preserve the confidentiality of the party. We refer to F.C. as Father and Z.T. as Mother to limit the proliferation of initials in this opinion.

2 Statutory references are to the Welfare and Institutions Code.

Following a mediation, Father and Mother admitted those allegations (others were dismissed) and submitted to the juvenile court's jurisdiction. In July 2007 the juvenile court declared L.T. and his three younger sisters dependent children of the court and found that returning them to Father and Mother would put them at risk of substantial harm. (§ 361, subd. (c)(1).) The written case plan agreed to by Father and Mother and approved by the court provided for monitored visitation with the children. The court ordered family reunification services and directed both Father and Mother to participate in parenting classes, submit to random drug testing and obtain domestic violence counseling. The court acknowledged at the July 2007 hearing that Mother had a prescription from her physician to use marijuana to treat pain from a stroke following an automobile accident and ordered her to complete a substance abuse program if she tested positive for a substance other than marijuana. The court apparently was not informed at that time that Mother was pregnant.

2. *G.T.'s Detention*

Mother gave birth to G.T. in November 2007. The Department immediately placed a hospital hold on G.T. and filed a section 300 petition alleging G.T. was a person within the meaning of section 300, subdivisions (a), (b) and (j). The petition alleged, among other things, Mother is a regular user of marijuana, which renders her incapable of providing G.T. with adequate care and supervision; Mother had used marijuana throughout her pregnancy with G.T.;[3] Father knew Mother was using marijuana while she was pregnant with G.T. and failed to protect G.T.; and Father and Mother had a history of engaging in domestic violence in front of their children, putting G.T. at risk if she were released to her parents' custody. The Department also reported that, although Father and Mother were in partial compliance with the case plan in the dependency proceedings involving their older children, neither of them had obtained the court-ordered domestic violence counseling.

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[3] Toxicology tests were not performed on G.T., and there is no evidence G.T. suffered any harmful effects as a result of her mother's use of marijuana during pregnancy.

Finding a prima facie case had been established showing G.T. was a child within the meaning of section 300, the court ordered G.T. detained in hospital/shelter care pending the court's jurisdiction and disposition hearings. The court also ordered family reunification services for both parents, monitored visitation for Mother and unmonitored visitation for Father.

3. *The Jurisdiction and Disposition Hearings*

After several continuances to accommodate proceedings in connection with G.T.'s older siblings[4] as well as other matters, the contested jurisdiction hearing took place on May 13, 2008. Following an evidentiary hearing, the court sustained an amended section 300 petition. The court found jurisdiction over G.T. was appropriate because Father and Mother had a history of engaging in domestic violence in the presence of their children and had failed to obtain the court-ordered counseling to address it, creating a danger to G.T.'s health and well being if she were released to their custody (§ 300, subd. (a), (b)); Mother had continued to use marijuana in a manner that rendered her incapable of caring for G.T. (§ 300, subd. (a)); and Father had been aware of Mother's marijuana use during her pregnancy and failed to protect G.T. from the risks associated with that use (§ 300, subd. (b)).[5]

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4 On April 23, 2008, following an evidentiary hearing in the six-month review proceedings for G.T.'s siblings (§ 366.21, subd.(e)), the juvenile court found a substantial risk of harm to those children existed if they were returned to their parents. The court found Father and Mother were not in compliance with their case plans as neither had obtained counseling on domestic violence issues. The court also found Father and Mother had not regularly visited the children. The court terminated family reunification services and set a section 366.26 selection and implementation hearing. On September 15, 2008 we denied on the merits Father and Mother's petition for writ of mandate seeking to vacate that order. (*F.C. v. Superior Court* (Sept. 15, 2008, B207514) [nonpub. opn.].)

5 The section 300 petition had also alleged Father and Mother had used marijuana and used improper physical discipline with G.T.'s older siblings. The court acknowledged Father had provided 10 clean drug tests and, finding no evidence of current drug use, dismissed allegations in the petition relating to Father's drug use. The court also dismissed allegations relating to Father's physical abuse of G.T.'s siblings.

The disposition hearing for G.T. took place on May 13, 2008, immediately following the jurisdiction hearing. The court declared G.T. a dependent child of the court within the meaning of section 300, subdivisions (a), (b), and (j), finding by clear and convincing evidence there would be a substantial danger to G.T.'s mental and physical health and well being if she were returned to her parents' custody. The court ordered family reunification services for both parents and individual counseling. Father was permitted unmonitored visitation with G.T. in her placement. Father filed a timely appeal from the disposition order.

DISCUSSION

1. *Standard of Review*

When the sufficiency of the evidence to support a juvenile court's finding or order is challenged on appeal, the reviewing court must determine if there is substantial evidence, contradicted or uncontradicted, that supports it. (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393; *Cheryl P. v. Superior Court* (2006) 139 Cal.App.4th 87, 96.) Under this standard of review we examine the whole record in a light most favorable to the findings and conclusions of the juvenile court and defer to that court on issues of credibility of the evidence and witnesses. (*In re Tania S.* (1992) 5 Cal.App.4th 728, 733-734.) We must resolve all conflicts in support of the determination and indulge all legitimate inferences to uphold the court's order. Additionally, we may not substitute our deductions for those of the trier of fact. (*In re Katrina C.* (1988) 201 Cal.App.3d 540, 547; *In re John V.* (1992) 5 Cal.App.4th 1201, 1212; *In re Eric B.* (1987) 189 Cal.App.3d 996, 1004-1005.)

2. *Substantial Evidence Supports the Juvenile Court's Jurisdiction Findings*

Father contends the court's jurisdictional findings based on his and Mother's history of domestic violence are unsupported because, although there was evidence of past domestic violence (and a sustained finding in a pending dependency proceeding involving their other children), there was no evidence domestic violence continued to be a risk at the time of the adjudication hearing in G.T.'s dependency proceedings. (See *In re Rocco M.* (1991) 1 Cal.App.4th 814, 824 ["While evidence of past conduct may be

probative of current conditions, the question under section 300 is whether circumstances at the time of the hearing subject the minor to the defined risk of harm. [Citations.] Thus, the past infliction of physical harm by a caretaker, standing alone, does not establish a substantial risk of physical harm; '[t]here must be some reason to believe the acts may continue in the future.'" (Fn. omitted.)]; accord, *In re Alysha S.* (1996) 51 Cal.App.4th 393, 399.)

Father's argument disregards the court's finding he had not initiated, much less completed, the court-ordered counseling needed to address his serious domestic violence problem, a recurring issue that had led to the juvenile court's exercise of jurisdiction over G.T.'s older siblings in a still-pending dependency proceeding. Significantly, this is not a case in which the past incidents of domestic violence are remote in time. The court's findings concerning Father's older children were made a mere four months before the petition was filed in this case. In sustaining the domestic violence allegations in the instant proceeding, the court properly concluded Father's and Mother's failure to address their domestic violence problem in individual counseling put G.T. at risk of serious harm, a concern forcefully echoed by G.T.'s own counsel in urging the court to sustain the domestic violence allegations in the petition. The record established more than a sufficient basis for the court's findings that Father's history of domestic violence put G.T. at risk of serious physical and emotional harm. (See *In re S.O.* (2002) 103 Cal.App.4th 453, 461 ["'[P]ast conduct may be probative of current conditions'" if there is a reason to believe the conduct will continue. Mother's failure to address factors that led to her failure to protect children from domestic violence created risk harm would continue].)

Father also contends the evidence was insufficient to support the court's finding he failed to protect G.T. from Mother's marijuana use. The juvenile court's domestic violence findings are sufficient to support jurisdiction. (See *In re Alexis E.* (2009) 171 Cal.App.4th 438, 451 ["When a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court's jurisdiction, a reviewing court can affirm the juvenile court's finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by

substantial evidence. In such a case, the reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence."].)[6] Nevertheless, for Father's benefit, we address his contention.

According to the evidence presented at the jurisdiction hearing, Mother began prenatal care with an obstetrician on July 25, 2007, when she was 32 weeks pregnant. The obstetrician's office manager conducted an intake interview and learned Mother was using marijuana for medical reasons. The office manager informed Mother she would need to stop using marijuana during her pregnancy, and Mother assured her she would. She did not. Moreover, although Mother told social workers the physician who had prescribed the marijuana told her she could use it in limited amounts while pregnant, that physician denied doing so. To the contrary, he reported to social workers he did not and would not prescribe or condone marijuana use during pregnancy.

Notwithstanding this record, Father insists there is no evidence G.T. suffered any actual harm from Mother's continued marijuana use. Actual harm, of course, is not a prerequisite to jurisdiction in dependency proceedings. (See § 300 [requiring evidence of actual harm or "substantial risk" that the child will suffer serious physical harm or illness].) Nor does the legality of Mother's drug use shield it from consequences in dependency proceedings. (See, e.g., *In re Alexis E., supra,* 171 Cal.App.4th at p. 452 ["Section 300.2 further states that '[t]he provision of a home environment free from the negative effects of substance *abuse* is a necessary condition for the safety, protection and physical and emotional well-being of the child.' . . . We cannot fathom that the Legislature intended that negative effects on children from marijuana smoke would be unacceptable if it were being smoked outside the medical marijuana law, but acceptable if the person smoking the substance in their home were doing it legally."]; *In re Samkirtana*

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6 Jurisdiction over the children was also proper based on findings relating to Mother that are not challenged on appeal. (See *In re Alysha S., surpa,* 51 Cal.App.4th at p. 397 [a jurisdictional finding against one parent is sufficient to warrant dependency jurisdiction; "the minor is a dependent if the actions of either parent bring her within one of the statutory definitions of a dependent"]; *In re Jeffrey P.* (1990) 218 Cal.App.3d 1548, 1553-1554.)

S. (1990) 222 Cal.App.3d 1475, 1489 [mother's use of alcohol, though legal, was cause for finding children were at risk of harm].) The question is whether there is substantial evidence to support the court's finding that Mother's use of marijuana posed a substantial risk of harm. Indeed, there is.

According to the evidence at trial, Mother used marijuana during her pregnancy against medical advice. Father's uncritical acquiescence to Mother's marijuana use during her entire pregnancy, coupled with evidence Mother had smoked marijuana in the presence of Father and their children in the past, reflected, in the juvenile court's view, Father's total disregard for the risks that Mother's use of marijuana posed to his children. We have little difficulty concluding the court's concern, based on the evidentiary record, was sufficient to warrant jurisdiction in this case. (See, e.g., *In re Alexis E., supra,* 171 Cal.App.4th at p. 452 [father's use of prescription marijuana in children's presence posed risk of substantial harm; "[w]hile it is true that the mere use of marijuana by a parent will not support a finding of risk to minors (*In re David M.* (2005) 134 Cal.App.4th 822, 829-830; *Jennifer A. v. Superior Court* (2004) 117 Cal.App.4th 1322, 1345-1346), the risk to the minors here is not speculative. There is a risk to the children of the negative effects of second hand marijuana smoke."].)

3. *Substantial Evidence Supports the Juvenile Court's Disposition Finding Concerning the Danger to G.T. from Father's Failure To Address His Domestic Violence Problem*

Father contends, even if there was substantial evidence to support jurisdiction, the evidence was insufficient to satisfy the higher "clear and convincing" burden required to support the court's disposition order removing G.T. from his custody. "[I]n dependency proceedings the burden of proof is substantially greater at the dispositional phase than it is at the jurisdictional phase if the minor is to be removed from his or her home." (*In re Isayah C.* (2004) 118 Cal.App.4th 684, 694.) The burden of proof at the jurisdictional phase is preponderance of the evidence; the burden of proof at disposition is clear and convincing evidence. (*Ibid.*; *In re Cheryl H.* (1984) 153 Cal.App.3d 1098, 111-1113; see also § 355, subd. (a) [jurisdiction findings by preponderance of evidence]; § 361,

subd. (c) [disposition findings by clear and convincing evidence].) This heightened burden of proof at disposition balances the constitutionally protected rights of parents to the care, custody and management of their children with the need to protect the child when that care, custody and management threatens the child's safety and well-being. (*Santosky v. Kramer* (1982) 455 U.S. 745, 753 [102 S.Ct. 1388, 71 L.Ed.2d 599]; *In re Angelia P.* (1981) 28 Cal.3d 908, 917.)

In reviewing the court's disposition findings, we consider "the record in the light most favorable to the [juvenile] court to determine whether there is substantial evidence from which a reasonable trier of fact could make the necessary findings based on clear and convincing evidence . . . ." (*Tyrone W. v. Superior Court* (2007) 151 Cal.App.4th 839, 852; *In re Isayah C., supra,* 118 Cal.App.4th at pp. 694-695.) Clear and convincing evidence "requires a high probability, such that the evidence is so clear as to leave no substantial doubt." (*In re Isayah C.,* at p. 695; *In re Luke M.* (2003) 107 Cal.App.4th 1412, 1426.)

Father contends there was no clear and convincing evidence of a present risk of domestic violence nor was there any evidence G.T. was actually harmed or was in danger of being harmed by Mother's medical use of marijuana. However, indulging, as we must, all reasonable inferences to support the juvenile court's findings (*In re Misako R.* (1991) 2 Cal.App.4th 538, 545), the evidence of Father's failure to address the domestic violence that was the subject of pending dependency proceedings involving his older children is sufficient, for the reasons we have explained, to support the disposition order. (See, e.g., *In re S.O., supra,* 103 Cal.App.4th at p. 461.)[7]

Father alternatively argues the court never made the requisite finding that removal was the only way to protect G.T. from that danger. (See § 361, subd. (d) ["court shall

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[7] Because the court's finding Father had failed to address in individual counseling sessions his propensity for domestic violence is sufficient to support the disposition order removing G.T. from his custody, we need not consider whether his failure to protect G.T. from Mother's use of marijuana for medical purposes was also sufficient to warrant removal at disposition. (See, e.g., *In re Alexis E., supra,* 171 Cal.App.4th at p. 451; *In re Alysha S., supra,* 51 Cal.App.4th at p. 397.)

make a determination as to whether reasonable efforts were made to prevent or to eliminate the need for removal of the minor from his or her home"].) He asserts the feasibility of less drastic alternatives to removal, including allowing G.T. to remain in his care under the supervision of the Department. Contrary to Father's contention, the juvenile court expressly concluded "there is no reasonable means" G.T.'s physical health could be protected without removing her from her parents' custody. In light of the substantial evidence supporting the court's findings that Father had failed to address his domestic violence problem, we find no error in the court's conclusion.[8]

DISPOSITION

The order is affirmed.

PERLUSS, P. J.

We concur:

WOODS, J.

JACKSON, J.

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8 Although Father also argued in his opening appellate brief the court had failed to comply with notice requirements under the Indian Child Welfare Act (ICWA) (25 U.S.C. § 1902 et seq.), he expressly withdrew that argument in reply, acknowledging that ICWA requirements had been satisfied in this case.